* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1117 of 2006**

Judgment reserved on: July 16, 2007

% Judgment delivered on: August 27, 2007

The Commissioner of Income Tax
Delhi-I, New Delhi ...Appellant

Through Mrs. Prem Lata Bansal with
Ms. Sonia Mathur, Advocates

Versus

M/s Balaji Wire Pvt. Ltd.
F-3, Main Road
Shastri Nagar
Delhi-110052 ...Respondent

Through Mr. Ajay Vohra with Ms. Kavita Jha,
Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 31st January, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in respect of a batch of appeals filed by a group of assessees called the Bansal Group.

2. Search and seizure operations under Section 132(1) of the Income Tax Act, 1961 (for short the Act) were conducted on 11th September, 2001 at various residential and business premises of a group of assessees, including the assessee before us, collectively called the Bansal Group. Thereafter, proceedings were initiated against the assessee under Section 158-BC of the Act. The Assessing Officer made huge additions and these additions were, by and large, confirmed by the Commissioner of Income Tax (Appeals) [CIT (A)]. The Tribunal set aside the orders of the CIT (A) and that is why the Revenue is before us. Since the facts of all the cases are more or less similar, they were dealt with by the Tribunal by one order and we do the same.

3. Two issues have been canvassed before us: firstly with

regard to unexplained payment of commission and secondly with regard to excess stock of goods found in the searched premises.

4. There is no dispute that the search and seizure operation was conducted on 11th/12th September, 2001. Nothing incriminating was found during the course of search except the books of account of the assessee and the Revenue wanted to verify their correctness. Accordingly, on 25th September, 2001, the Deputy Director of Income Tax recorded the statement of one V.P. Jain. According to V.P. Jain, he had made purchases of Rs.25 crores from the Bansal Group out of which delivery was made only to the extent of about Rs.2 or Rs.3 crores. In respect of the balance Rs.22 or Rs.23 crores, no material or steel wires were purchased and only bills were issued. The assessee on its part showed sales having been made in cash. The allegation is that V.P. Jain received a commission for giving these bills.

5. Subsequently, it appears that V.P. Jain retracted his statement and, therefore, another statement of V.P. Jain was recorded on 14th December, 2001 when he was cross-examined by one of the members of

the Bansal Group. In his statement recorded on 14th December, 2001, V.P. Jain stated that the goods were directly sent to his customers and, therefore, he (V.P. Jain) did not physically receive the goods in his shop. V.P. Jain stated that he had received no commission from the Bansal Group but the amounts received only represented cash receipts in respect of the sales effected.

6. The Assessing Officer was of the view that V.P. Jain was only preparing false bills for the Bansal Group for which he received a commission. Therefore, the Assessing Officer added back some amounts in the accounts of the assessee.

7. The principal contention urged by the assessee before the Tribunal, and which was accepted, was that during the course of search, no evidence was found of any bogus payments. Under these circumstances, the provisions of Chapter XIV-B of the Act were not at all applicable. The statements of V.P. Jain were post-search statements having no direct nexus with the search and they could not have been relied upon for the purposes of proceedings under Section 158-BC of

the Act.

8. As we understand it, in respect of a block assessment, undisclosed income is required to be computed on the basis of evidence found during the search or being directly relatable to evidence found during the search. In the present case, nothing was found during the search which would suggest that the books maintained by the assessee were unreliable. It is only subsequent to the search and with a view to verify the correctness of the books that the Deputy Director of Income Tax recorded the statement of V.P. Jain. Whatever be the merits or demerits of both statements of V.P. Jain, unless they could be directly connected with the recovery of any incriminating material during the search, they cannot be used against the assessee.

9. In ***Commissioner of Income Tax v. Ravi Kant Jain, [2001] 250 ITR 141***, this Court laid down the law with regard to the special procedure contemplated by Chapter XIV-B of the Act. It was held as follows:

> "The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which

> has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A."

10. Similarly, in ***Commissioner of Income Tax v. Elegant Homes Pvt. Ltd., [2003] 259 ITR 232***, the Rajasthan High Court held:

> "In Chapter XIV-B of the Act, special provisions for assessment in search cases have been given and if any amount of income has not been taxed and during the course of search, if some "undisclosed" income is found on the basis of material seized, that should be treated as undisclosed income as per the scheme of special assessment under the aforesaid Chapter."

11. The view expressed by this Court in ***Ravi Kant Jain*** is, of course, binding on us and we have also followed the view expressed by the Rajasthan High Court in ***Elegant Homes***. In ***Commissioner of Income Tax v. Jupiter Builders Pvt. Ltd., [2006] 287 ITR 287***, this Court reiterated the law that the undisclosed income must be unearthed as a result of the search. This is what was said on page 298 of the

Report:

> "Assessment proceedings undertaken under Chapter XIV-B are only in respect of undisclosed income that is that income which has not been, or would not have been disclosed and which has been unearthed as a result of the search or requisition.
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> Assessment proceedings under Chapter XIV-B are not concerned with that income which has already been disclosed and in respect of which regular assessment proceedings stand concluded or are still pending, or in respect of which time for filing of return has not expired on the date of search/ requisition and which stand recorded in the books of account on the date of search. The proceedings under Chapter XIV-B cannot be used as an opportunity to either reopen concluded assessments or to reassess the returned income by taking a fresh look at the disclosed facts and figures, unless, of course, they are found to be false as a result of the search or requisition."

12. In view of the above, we are clearly of the opinion that in the absence of any incriminating material found during the search conducted on 11th/12th September, 2001 in the premises of the Bansal Group, the statement of V.P. Jain recorded on 25th September, 2001 and on 14th December 2001 could not be used for proceedings under Chapter XIV-B of the Act.

13. Reliance was placed by learned counsel for the Revenue on

the statement of V.P. Jain recorded on 25th September, 2001. That statement was recorded after the search proceedings and appears to have been recorded only with a view to confirm the correctness of the account books. It is not as if the statement was recorded during the search proceedings nor is it the case of the Revenue that because of some incriminating material that was unearthed during the search proceedings that it became necessary to record the statement of V.P. Jain. It cannot, therefore, be said that the statement of V.P. Jain was a direct consequence or result of obtaining some incriminating material which showed that the assessee had undisclosed income.

14. Quite apart from the above, we also find that the statement of V.P. Jain was recorded behind the back of the assessee. When the assessee was in fact allowed to cross-examine V.P. Jain, after his second statement was recorded on 14th December, 2001, V.P. Jain had retracted from his earlier statement. The Assessing Officer, nevertheless, relied upon the statement given by V.P. Jain on 25th September, 2001 completely disregarding his subsequent statement.

15. Under these circumstances, we are of the view that the Revenue has not been able to raise any substantial question of law which would necessitate admission of this appeal.

16. The second question urged before the Tribunal and before us relates to excess stock being found during the course of the search. The assessee is engaged in the manufacture of mild steel galvanized iron wires. The wires are stacked in bundles and they apparently run into thousands of bundles. The search party did not physically count the bundles (as it was not possible) but took a visual estimate. There was also no actual weighment of the goods and the weight of the stock was taken on an estimate basis. As a result of this exercise, it was found that there was a discrepancy in the inventory as shown in the books and the inventory as found during the course of the search proceedings.

17. The assessee sought to explain this and contended that making an estimate of the number of bundles and estimating the weight of the goods visually is totally inadequate. It was contended by the assessee that different bundles have a different weight and it cannot be

said with any degree of certainty that the average weight of the goods was 65 kg per bundle. That the entire exercise was an estimate is confirmed by the CIT (A) who arrived at an average weight at 60 kg per bundle. Similarly, in respect of the fine wire products, the Assessing Officer took the average weight at 20 kg per bundle and this was reduced by the CIT (A) to 16 kg per bundle. This fact is being mentioned only to show that both the Assessing Officer as well as the CIT (A) made a guess with regard to the average weight of each bundle. The Assessing Officer as well as the CIT (A) took into consideration the fact that the employees of the assessee accompanying the search party did not raise any objection when the estimates were made and in fact they signed the panchnama indicating the number of bundles and the average weight.

18. The Tribunal came to the conclusion, with which we agree, that it would have been appropriate if the number of bundles and the average weight was worked out on some empirical basis rather than through mere guess work. It appears that during the search, the number of bundles and weight estimate in respect of half a dozen business

concerns were made within a few hours. The search party either did not have the necessary time or did not have the necessary expertise to correctly assess the stock position. A short cut appears to have been taken by the search party which came to a certain conclusion on an estimate basis. In law, as in life, a short cut is often a wrong cut.

19. The mere fact that some employees of the assessee signed the panchnama does not mean that they certified the correctness of the number of bundles or the average weight of each bundle. They only certified that they were witnesses to the proceedings. What conclusions have to be drawn from the panchnama is of no concern to those employees.

20. Of course, the best method of determining the number of bundles and their average weight would be to actually count the bundles and use machines/cranes for weighing each bundle. This is no doubt a tedious exercise but where a liability is sought to be foisted upon an assessee, the Revenue has to be a little more serious while exercising powers conferred upon it under the Act. Mere guess work or an

estimate cannot be an adequate substitute for a scientific investigation or carrying out some empirical study. The officers who conducted the search did not want to take the necessary trouble which, of course, would have been time consuming, but the impact of making a guesstimate can be quite damaging in so far as the assessee is concerned. The assessee cannot be made to suffer the consequences of lethargy on the part of the officers of the Revenue.

21. Under these circumstances, we are of the opinion that the Tribunal rightly came to the conclusion that the alleged excess stock calculated by the Revenue needs to be deleted. It is, of course, not possible today to redetermine the stock so the question of any remand does not arise.

22. In our view, no substantial question of law arises. Dismissed.

Madan B. Lokur, J

August 27, 2007 **V.B. Gupta, J**
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